

FILED & ENTERED

MAY 24 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

MARY CUMMINS-COBB,

Debtor.

Case No. 2:17-bk-24993-RK

Chapter 7

Adv. No. 2:18-ap-01066-RK

**ORDER DENYING DEFENDANT'S MOTION
TO DISMISS ADVERSARY PROCEEDING
DUE TO UNCLEAR HANDS**

KONSTANTIN KHIONIDI, AS TRUSTEE
OF THE COBBS TRUST,

Plaintiff,

vs.

MARY CUMMINS-COBB,

Defendant.

Date: March 27, 2019

Time: 2:00

Courtroom: 1675

Pending before the court is the motion of Defendant Mary Cummins-Cobb to dismiss the adversary proceeding due to unclean hands attributable to Plaintiff Konstantin Khiondi as Trustee of the Cobbs Trust. Defendant's assertion of unclean hands is the assertion of an affirmative defense to the complaint that was not raised in her answer filed on April 12, 2018, which it should have been pursuant to Federal Rule

1 of Bankruptcy Procedure 7008 and Federal Rule of Civil Procedure 8(c). While an
2 affirmative defense may be raised for the first time in a motion for summary judgment
3 under the law of this circuit, *Camarillo v. McCarthy*, 998 F.2d 638, 639 (9th Cir. 1993),
4 Defendant's motion does not meet the standard of a motion for summary judgment
5 under Local Bankruptcy Rule 7056-1 because she did not give notice of the motion at
6 least 42 days before the hearing on the motion and did not file a statement of
7 uncontroverted facts and conclusions of law and a separate proposed summary
8 judgment. Defendant's motion cannot be considered a proper motion to dismiss under
9 Federal Rule of Bankruptcy Procedure 7012 and Federal Rule of Civil Procedure 12 and
10 should have been brought as a summary judgment motion under Federal Rule of
11 Bankruptcy Procedure 7056 and Federal Rule of Civil Procedure 56 because she refers
12 to matters outside the pleadings to support her motion, which is not permitted for a
13 motion to dismiss under Federal Rule of Bankruptcy Procedure 7012 and Federal Rule
14 of Civil Procedure 12(d).

15 Therefore, the court denies the motion of Defendant to dismiss the adversary
16 proceeding due to unclean hands without prejudice because it is procedurally defective
17 because it does not comply with the requirements of Federal Rule of Bankruptcy
18 Procedure 7056, Federal Rule of Civil Procedure 56 and Local Bankruptcy Rule 7056-1.

19 The further hearing on this motion scheduled for May 29, 2019 to announce a
20 ruling is hereby vacated in light of the issuance of this written ruling. No appearances
21 on this motion are required on May 29, 2019.

22 IT IS SO ORDERED.

23
24 Date: May 24, 2019

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Robert Kwan
United States Bankruptcy Judge